

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

THE WONDERFUL COMPANY LLC, a
Delaware limited liability company; and CAL
PURE PRODUCE INC., a California
Nonprofit Cooperative Association,

Plaintiffs,

vs.

KEENAN FARMS, INC., a California
corporation,

Defendant.

Case No. 1:20-cv-01305-AWI-EPG

PROTECTIVE ORDER

(ECF No. 18)

On December 29, 2020, the parties filed a Stipulation and Proposed Order (ECF No. 18).

This is the second stipulation and proposed order the parties filed. On December 11, 2020, the parties filed a first proposed protective order, (ECF No. 14), which the Court denied as not complying with Eastern District of California Local Rule 141.1(c). That rule provides that every proposed protective order contain the following provisions: “(1) [a] description of the types of information eligible for protection under the order, with the description provided in general terms sufficient to reveal the nature of the information (e.g., customer list, formula for soda, diary of a troubled child); (2) [a] showing of particularized need for protection as to each category of information proposed to be covered by the order; and (3) [a] showing as to why the need for protection should be addressed by a court order, as opposed to a private agreement between or

1 among the parties.” (paragraph breaks omitted).

2 The revised stipulation largely complies with Local Rule 141.1(c). However, when
3 describing the types of information eligible for protection, which Local Rule 141.1(c)(1) requires,
4 the revised stipulation includes a catchall: “other confidential information that may be subject to
5 discovery in this action, but which should not be made available to the public generally.” (ECF
6 No. 18 at 2). This part of the description does not comply with Local Rule 141.1(c)(1). The Court
7 has deleted that clause from the stipulation but otherwise enters the proposed protective order.

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1 Plaintiffs The Wonderful Company LLC and Cal Pure Produce Inc. (“Plaintiffs”) and
2 Defendant Keenan Farms, Inc. (“Defendant”) (collectively, the “Parties”) jointly submit this
3 [Proposed] Stipulated Protective Order pursuant to Local Rule 141.1 of the United States District
4 Court, Eastern District of California, limiting the use and disposition of certain information and
5 documents. The Parties hereby stipulate as follows:

6 **1. PURPOSES AND LIMITATIONS**

7 Disclosure and discovery in this action are likely to involve the production of confidential,
8 proprietary, or private information, including but not limited to the Parties’ proprietary policies and
9 procedures; contracts with third-parties such as vendors, customers, and distributors which the
10 Parties are required to maintain confidential; trade secrets or other confidential research,
11 development, or commercial information; creation, design, development, selection of trade dress;
12 sales techniques; surveys, studies, investigations, reports, test groups, opinions from advertising or
13 marketing agencies, polling, and strategies concerning the marketing or advertising of the pistachio
14 product at issue; financial information; and information regarding personnel. The foregoing
15 information requires confidential treatment because it is highly sensitive, proprietary information,
16 and which unfettered public dissemination will irreparably harm the Parties. The information should
17 be protected by a court order instead of a private agreement between the Parties in light of its
18 particularly sensitive nature, to safeguard the information from public disclosure, to prevent use of
19 the information for any purpose other than prosecuting this litigation, and to afford the Parties with
20 immediate relief from this Court for violation of this Order. Accordingly, the Parties hereby
21 stipulate to and petition the Court to enter the following Stipulated Protective Order.

22 The Parties acknowledge that this Order does not confer blanket protections on all
23 disclosures or responses to discovery and that the protection it affords from public disclosure and
24 use extends only to the limited information or items that are entitled to confidential treatment under
25 the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
26 that this Stipulated Protective Order does not entitle them to file confidential information under seal;
27 Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied
28 when a Party seeks permission from the Court to file material under seal.

2. **DEFINITIONS**

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel, as well as their support staff.

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.8 House Counsel: attorneys who are employees of a Party to this action and their support staff. House Counsel does not include Outside Counsel of Record or any other outside counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
2 entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a Party to this action
4 but are retained to represent or advise a Party to this action and have appeared in this action on
5 behalf of that Party, or are affiliated with a law firm which has appeared on behalf of that Party,
6 and their support staff.

7 2.11 Party: any Party to this action, including all of its officers, directors, employees,
8 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

9 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
10 Material in this action.

11 2.13 Professional Vendors: persons or entities that provide litigation support services
12 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
13 storing, or retrieving data in any form or medium) and their employees and subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
15 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
17 Producing Party.

18 **3. SCOPE**

19 The protections conferred by this Stipulation and Order cover not only Protected Material,
20 but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
21 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
22 presentations by Parties or their Counsel that might reveal Protected Material. However, the
23 protections conferred by this Stipulation and Order do not cover the following information: (a) any
24 information that is in the public domain at the time of disclosure to a Receiving Party or becomes
25 part of the public domain after its disclosure to a Receiving Party as a result of publication not
26 involving a violation of this Order, including becoming part of the public record through trial or
27 otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained
28 by the Receiving Party after the disclosure from a source who obtained the information lawfully

1 and under no obligation of confidentiality to the Designating Party. Any use of Protected Material
2 at trial shall be governed by a separate agreement or order.

3 **4. DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations imposed by
5 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
6 order otherwise directs. Final disposition shall be deemed the latter of (1) dismissal of all claims
7 and defenses in this action, with or without prejudice; and (2) final judgement herein after the
8 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
9 including the time limits for filing any motions or applications for extension of time pursuant to
10 applicable law.

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
13 or Non-Party that designates information or items for protection under this Order must take care to
14 limit any such designation to specific material that qualifies under the appropriate standards. To
15 the extent it is practical to do so, the Designating Party must designate for protection only those
16 parts of material, documents, items, or oral or written communications that qualify – so that other
17 portions of the material, documents, items, or communications for which protection is not
18 warranted are not swept unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
20 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
21 unnecessarily encumber or delay the case development process or to impose unnecessary
22 expenses and burdens on other parties) expose the Designating Party to sanctions.

23 If it comes to a Designating Party's attention that information or items that it designated
24 for protection do not qualify for protection at all or do not qualify for the level of protection
25 initially asserted, that Designating Party must promptly notify all other parties that it is
26 withdrawing the mistaken designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
28 [see, e.g., second paragraph of Section 5.2(a) below], or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents,
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that
6 the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains
8 protected material.

9 A Party or Non-Party that makes original documents or materials available
10 for inspection need not designate them for protection until after the inspecting Party
11 has indicated which material it would like copied and produced. During the
12 inspection and before the designation, all of the material made available for
13 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY.” After the inspecting Party has identified the documents it wants copied and
15 produced, the Producing Party must determine which documents, or portions thereof,
16 qualify for protection under this Order. Then, before producing the specified
17 documents, the Producing Party must affix the appropriate legend
18 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY”) to each page that contains Protected Material.

20 (b) for testimony given in deposition or in other pretrial or trial proceedings,
21 that the Designating Party identify on the record, before the close of the deposition,
22 hearing, or other proceeding, all protected testimony and specify the level of
23 protection being asserted. When it is impractical to identify separately each portion
24 of testimony that is entitled to protection and it appears that substantial portions of
25 the testimony may qualify for protection, the Designating Party may invoke on the
26 record (before the deposition, hearing, or other proceeding is concluded) a right to
27 have up to 21 days to identify the specific portions of the testimony as to which
28 protection is sought and to specify the level of protection being asserted. Only those

1 portions of the testimony that are appropriately designated for protection within the
2 21 days shall be covered by the provisions of this Stipulated Protective Order.
3 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
4 afterwards if that period is properly invoked, that the entire transcript shall be treated
5 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY.”

7 Parties shall give the other parties notice if they reasonably expect a
8 deposition, hearing or other proceeding to include Protected Material so that the other
9 parties can ensure that only authorized individuals who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
11 proceedings. The use of a document as an exhibit at a deposition shall not in any
12 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY.”

14 Transcripts containing Protected Material shall have an obvious legend on
15 the title page that the transcript contains Protected Material, and the title page shall
16 be followed by a list of all pages (including line numbers as appropriate) that have
17 been designated as Protected Material and the level of protection being asserted by
18 the Designating Party. The Designating Party shall inform the court reporter of these
19 requirements. Any transcript that is prepared before the expiration of a 21-day period
20 for designation shall be treated during that period as if it had been designated
21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
22 otherwise agreed. After the expiration of that period, the transcript shall be treated
23 only as actually designated.

24 (c) for information produced in some form other than documentary and for
25 any other tangible items, that the Producing Party affix in a prominent place on the
26 exterior of the container or containers in which the information or item is stored the
27 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
28 EYES ONLY.” If only a portion or portions of the information or item warrant

1 protection, the Producing Party, to the extent practicable, shall identify the protected
2 portion(s) and specify the level of protection being asserted.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the Designating Party's
5 right to secure protection under this Order for such material. Upon timely correction of a
6 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
7 in accordance with the provisions of this Order.

8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
10 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
12 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the
14 original designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
16 by providing written notice of each designation it is challenging and describing the basis for each
17 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
18 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
19 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
20 begin the process by conferring directly (via telephonic conference; other forms of communication
21 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
22 Party must explain the basis for its belief that the confidentiality designation was not proper and
23 must give the Designating Party an opportunity to review the designated material, to reconsider the
24 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
25 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
26 has engaged in this meet and confer process first or establishes that the Designating Party is
27 unwilling to participate in the meet and confer process in a timely manner.

28 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court

1 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
2 Local Rule 230 within 21 days of the initial notice of challenge or within 14 days of the parties
3 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each
4 such motion must be accompanied by a competent declaration affirming that the movant has
5 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
6 the Designating Party to make such a motion, including the required declaration, within 21 days
7 (or 14 days, if applicable) shall automatically waive the confidentiality designation for each
8 challenged designation. In addition, the Challenging Party may file a motion challenging a
9 confidentiality designation at any time if there is good cause for doing so, including a challenge to
10 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
11 this provision must be accompanied by a competent declaration affirming that the movant has
12 complied with the meet and confer requirements imposed by the preceding paragraph.

13 The burden of persuasion in any such challenge proceeding shall be on the Designating
14 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
15 unnecessary expenses and burdens on the other Party) may expose the Challenging Party to
16 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file
17 a motion to retain confidentiality as described above, all parties shall continue to afford the material
18 in question the level of protection to which it is entitled under the Producing Party's designation
19 until the court rules on the challenge.

20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
22 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
23 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
24 the categories of persons and under the conditions described in this Order. When the litigation has
25 been terminated, a Receiving Party must comply with the provisions of Section 13 below.

26 Protected Material must be stored and maintained by a Receiving Party at a location and in
27 a secure manner that ensures that access is limited to the persons authorized under this Order.

28 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered

1 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
2 information or item designated “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
4 employees of said Outside Counsel of Record to whom it is reasonably necessary to
5 disclose the information for this litigation and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (b) the officers, directors, and employees (including House Counsel) of the
8 Receiving Party to whom disclosure is reasonably necessary for this litigation and
9 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants, and
15 Professional Vendors to whom disclosure is reasonably necessary for this litigation
16 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
17 A);

18 (f) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the “Acknowledgment and Agreement to
20 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
21 by the court. Pages of transcribed deposition testimony or exhibits to depositions
22 that reveal Protected Material must be separately bound by the court reporter and
23 may not be disclosed to anyone except as permitted under this Stipulated Protective
24 Order; and

25 (g) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information.

27 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
28 Information or Items. Unless otherwise ordered by the court or permitted in writing by the

1 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
4 employees of said Outside Counsel of Record to whom it is reasonably necessary to
5 disclose the information for this litigation and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (b) House Counsel of the Receiving Party (1) who has no involvement in
8 competitive decision-making, (2) to whom disclosure is reasonably necessary for this
9 litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound”
10 (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1),
11 below, have been followed;

12 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
13 necessary for this litigation, (2) who have signed the “Acknowledgment and
14 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
15 paragraph 7.4(a)(2), below, have been followed;

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, and
18 Professional Vendors to whom disclosure is reasonably necessary for this litigation
19 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
20 A); and

21 (f) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information.

23 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to House Counsel or
25 Experts.

26 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
27 Designating Party, a Party that seeks to disclose to House Counsel any information
28 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the
 2 Designating Party that (1) sets forth the full name of the House Counsel and the city
 3 and state of his or her residence, and (2) describes the House Counsel’s current and
 4 reasonably foreseeable future primary job duties and responsibilities in sufficient
 5 detail to determine if House Counsel is involved, or may become involved, in any
 6 competitive decision-making.

7 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
 8 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
 9 Order) any information or item that has been designated “HIGHLY
 10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)
 11 first must make a written request to the Designating Party that (1) identifies the
 12 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
 13 information that the Receiving Party seeks permission to disclose to the Expert, (2)
 14 sets forth the full name of the Expert and the city and state of his or her primary
 15 residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the
 16 Expert’s current employer(s), (5) identifies each person or entity from whom the
 17 Expert has received compensation or funding for work in his or her areas of expertise
 18 or to whom the expert has provided professional services, including in connection
 19 with a litigation, at any time during the preceding five years,¹ and (6) identifies (by
 20 name, case number, filing date, and location of the court) any litigation in connection
 21 with which the Expert has offered expert testimony, including through a declaration,
 22 report, or testimony at a deposition or trial, during the preceding five years.

23 (b) A Party that makes a request provides the information specified in the
 24 preceding respective paragraphs may disclose the subject Protected Material to the
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 27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
 28 party, then the Expert should provide whatever information the Expert believes can be disclosed
 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
 shall be available to meet and confer with the Designating Party regarding any such engagement.

1 identified House Counsel or Expert unless, within 14 days of delivering the request,
2 the Party receives a written objection from the Designating Party. Any such
3 objection must set forth in detail the grounds on which it is based.

4 (c) A Party that receives a timely written objection must meet and confer
5 with the Designating Party (through direct voice to voice dialogue) to try to resolve
6 the matter by agreement within seven days of the written objection. If no agreement
7 is reached, the Party seeking to make the disclosure to House Counsel or the Expert
8 may file a motion as provided in Local Rule 230 seeking permission from the court
9 to do so. Any such motion must describe the circumstances with specificity, set forth
10 in detail the reasons why the disclosure to House Counsel or the Expert is reasonably
11 necessary, assess the risk of harm that the disclosure would entail, and suggest any
12 additional means that could be used to reduce that risk. In addition, any such motion
13 must be accompanied by a competent declaration describing the Parties' efforts to
14 resolve the matter by agreement (i.e., the extent and the content of the meet and
15 confer discussions) and setting forth the reasons advanced by the Designating Party
16 for its refusal to approve the disclosure.

17 In any such proceeding, the Party opposing disclosure to House Counsel or
18 the Expert shall bear the burden of proving that the risk of harm that the disclosure
19 would entail (under the safeguards proposed) outweighs the Receiving Party's need
20 to disclose the Protected Material to its Designated House Counsel or Expert.

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
22 **OTHER LITIGATION**

23 If a Party is served with a subpoena or a court order issued in other litigation that compels
24 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

26 (a) promptly notify in writing the Designating Party. Such notification shall
27 include a copy of the subpoena or court order;

28 (b) promptly notify in writing the party who caused the subpoena or order

1 to issue in the other litigation that some or all of the material covered by the subpoena
2 or order is subject to this Protective Order. Such notification shall include a copy of
3 this Stipulated Protective Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued
5 by the Designating Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with the subpoena
7 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
8 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the
9 court from which the subpoena or order issued, unless the Party has obtained the Designating
10 Party’s permission. The Designating Party shall bear the burden and expense of seeking protection
11 in that court of its confidential material – and nothing in these provisions should be construed as
12 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
13 another court.

14 9. **A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PROTECTED IN**
15 **THIS LITIGATION.**

16 (a) The terms of this Order are applicable to information produced by a Non-
17 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by
19 Non-Parties in connection with this litigation is protected by the remedies and relief
20 provided by this Order. Nothing in these provisions should be construed as
21 prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

- 26 1. promptly notify in writing the Requesting Party and the Non-Party that
27 some or all of the information requested is subject to a confidentiality agreement
28 with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" (Exhibit A).

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to

1 seek its modification by the court in the future.

2 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
3 Order no Party waives any right it otherwise would have to object to disclosing or producing any
4 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
5 no Party waives any right to object on any ground to use in evidence any of the material covered
6 by this Protective Order.

7 12.3 Filing Protected Material. Without written permission from the Designating Party
8 or a court order secured after appropriate notice to all interested persons, a Party may not file in
9 the public record in this action any Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Local Rule 141. Protected Material may only be filed under
11 seal after leave of court has been granted pursuant Local Rule 141. If a Receiving Party's request
12 to file Protected Material under seal pursuant to Local Rule 141 is denied by the court, then the
13 Receiving Party may file the Protected Material in the public record unless otherwise instructed
14 by the court.

15 **13. FINAL DISPOSITION**

16 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
17 Receiving Party must return all Protected Material to the Producing Party or destroy such
18 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
19 compilations, summaries, and any other format reproducing or capturing any of the Protected
20 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
21 submit a written certification to the Producing Party (and, if not the same person or entity, to the
22 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
23 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
24 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
25 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
26 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
28 product, and consultant and expert work product, even if such materials contain Protected

1 Material. Any such archival copies that contain or constitute Protected Material remain subject
2 to this Protective Order as set forth in Section 4.

3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

4 DATED: December 29, 2020

ROLL LAW GROUP PC

By: /s/ Michael M. Vasseghi

Michael M. Vasseghi

Attorneys for Plaintiffs The Wonderful
Company LLC and Cal Pure Produce Inc.

8 DATED: December 29, 2020

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

By: /s/ Ian A. Stewart

Ian A. Stewart

Attorneys for Defendant
Keenan Farms, Inc.

Exhibit A

Acknowledgment and Agreement to Be Bound

I, _____, of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on _____ in *The Wonderful Company LLC et al. v. Keenan Farms, Inc.*, Case No. 1:20-cv-01305-AWI-EPG. I agree to comply with and to be bound by all the terms of the Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Dated: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

1 IT IS SO ORDERED.
2

3 Dated: January 4, 2021

/s/ Eric P. Shojan
UNITED STATES MAGISTRATE JUDGE